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April 2, 2020

*VIA EMAIL DELIVERY*

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RE: Urgent Requests for Information and Actions Needed During COVID-19 Pandemic and USCIS Closures

Dear U.S. Citizenship and Immigration Services:

On behalf of the Immigrant Legal Resource Center (ILRC) and the community of immigrants, immigration attorneys and immigration legal services providers with whom we work, we write to express our concerns about the impact the COVID-19 pandemic and subsequent USCIS office closures are having on immigrants. We thank USCIS for the measures already taken to address the effects of the pandemic and urge additional measures. The concerns listed are a preliminary list, and we will raise other issues as they develop.

USCIS has closed public services in response to the World Health Organization's March 11, 2020 declaration that COVID-19 is a global pandemic, and President Trump's March 13, 2020 declaration of a national state of emergency. State and local governments have taken various measures to enforce public health protocols, such as closing all but essential businesses and drastically restricting public movements in many locales.

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As of March 30, 2020, the President has extended social distancing guidelines requiring avoidance of nonessential travel, staying away from work, not visiting bars and restaurants and not gathering in groups of more than 10 people for at least another month, and he has suggested that recovery won't take place until June 2020.<sup>1</sup>

We fully appreciate that the closure of USCIS public services is needed during the COVID-19 pandemic but we believe USCIS needs to address the many consequences that closure will have on the public.

We have suggested some actions that will help. We also request more information about the current impacts on USCIS operations, as set forth below. We urge USCIS to perform public engagement through teleconferences during this period to help ease the atmosphere of fear and uncertainty facing immigrant communities and practitioners.

### **Background on the ILRC**

The ILRC is a national non-profit organization that provides legal trainings and educational materials for the immigration legal field and immigrant community. The ILRC also engages in advocacy to advance immigrant rights. The ILRC's mission is to work with and educate immigrants, community organizations, and the legal sector to continue to build a democratic society that values diversity and the rights of all people. Since its inception in 1979, the ILRC has provided technical assistance on hundreds of thousands of immigration law issues, trained thousands of advocates and pro bono attorneys annually on immigration law, distributed thousands of practitioner guides, provided expertise to immigrant-led advocacy efforts across the country, and supported hundreds of immigration legal non-profit organizations in building their capacity. The ILRC has produced legal trainings, practice advisories, and other materials.

The ILRC also leads the New Americans Campaign, a national non-partisan effort that brings together private philanthropic funders, leading national immigration and service organizations, and over two hundred local services providers across more than 20 different regions to help prospective Americans apply for U.S. citizenship. As the lead organization for the New Americans Campaign, the ILRC receives and re-grants substantial philanthropic dollars to local immigration legal services providers across the United States who help lawful permanent residents (LPRs) apply for naturalization.

The ILRC is also a leader in advocacy to strengthen VAWA, U, and T immigration relief for survivors, coordinating taskforces and producing trusted legal resources including webinars, trainings, and manuals such as *The VAWA Manual: Immigration Relief for Abused Immigrants*, *The U Visa: Obtaining Status for Immigrant Victims of Crime* and *T Visas: A Critical Option for Survivors of Human Trafficking*.

We have gathered the requests below for further information from the attorneys and immigrants with whom we partner. There is considerable uncertainty at present about the extent of the impact on USCIS operations, as USCIS offices and Application Support Centers with public contact have been shut down and Service Centers may be impacted by the inability of workers who manage key operations, such as mail rooms, to go to work.

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<sup>1</sup> The New York Times, *Trump Extends Social Distancing Guidelines Through End of April*, (Mar. 30, 2020) <https://www.nytimes.com/2020/03/29/us/politics/trump-coronavirus-guidelines.html>, and The New York Times, *Corona Virus Live Updates, U.S. Extends Social Distancing Curbs After Estimated 200,000 Deaths* (Mar. 30, 2020), <https://www.nytimes.com/2020/03/29/us/politics/trump-coronavirus-guidelines.html>.

In addition, we have offered recommendations for agency actions during the current crisis.

### **Information requested**

- Please clarify whether USCIS Service Centers remain open and are continuing to adjudicate applications. Please also clarify whether the Service Centers continue to receive and distribute ingoing and outgoing mail at the normal level of operations. Are USCIS Lockboxes currently fully operational? Are in-person operations at Service Centers, such as the mail rooms, fully operational?
- Will the Service Centers continue to produce and mail green cards, employment authorization cards, and advance parole documents during this period of the pandemic?
- The USCIS Contact Center is listed on the USCIS website as available for emergencies during closure. What requests would be deemed an emergency that the center could resolve? The Contact phone line appears to offer only recorded information. How can a caller access a live operator on this line?
- Are receipts for mailed-in applications being issued on the normal schedule? Are biometrics notices being issued at all now? Are fee waivers being adjudicated?
- Are conditional residents who are approaching their deadline for removal of the condition being granted any extension of their conditional residence during this period of interrupted operations? If so, how long is the extension?
- Can individuals schedule emergency InfoPass appointments for passport stamps as proof of permanent resident status? Some persons may need this to access unemployment, social security benefits, and Medicare when their green cards are expired or have been lost.
- Are local office staff continuing to adjudicate pending cases (for example, when the applicant has responded to an RFE but has not received a decision)?

### **Suggestions for Agency Actions Needed in Response to the Pandemic**

- **Facilitate Naturalization During Closure by Using Remote Interviews and Oath Ceremonies and by Allowing Emergency Requests for Individuals.** As of March 18, all USCIS field and district offices are closed and all in-person services are suspended. This brings naturalization processing to a halt and will delay processing for naturalization once offices are reopened. Given the impact of naturalization on an individual's right to vote, ability to travel, ability to petition for family members to immigrate, and to access better jobs, USCIS should take all measures in its power to facilitate naturalization during this period. These measures include remote naturalization interviews and oath ceremonies, using available and accessible technology. We also call on USCIS to accept emergency requests for interviews and individual oath ceremonies. For any naturalization applicant who successfully completed their naturalization interview and is waiting for an oath ceremony to be scheduled, the USCIS has, and should exercise, its statutory power to provide for immediate administrative naturalization when a judicial oath ceremony is impracticable. The oath should be administered via teleconference or telephone, if the applicant is able. As soon as public health guidelines permit in-person naturalization interviews and oath ceremonies to resume, USCIS should schedule same-day oath ceremonies, following the lead of the Baltimore field office, which did so in the first half of March 2020.
- **Halt the Effective Date of the Public Charge Rule and Amend the USCIS Policy Manual on Public Charge.** Since this administration announced the changes to public charge policy, immigrants have been fearful of accessing emergency care and other benefits to which they are entitled due to fears about whether it will

lead to denial of an immigration application or even deportation. The coronavirus is compounding these fears among many immigrants, even those not subject to public charge inadmissibility, to access critical treatment and other health care services that might keep themselves and their families healthy, as well as to stop the spread of this virus. Recognizing the fear created by this rule and its impact on public health, USCIS recently added language on its central website to ameliorate the harsh effects of the public charge regulation on persons who might seek medical care or public assistance related to COVID-19 and to take into account the impact on finances of mandatory closures and public health orders.<sup>2</sup> While this language may be helpful, it does not go far enough. A stronger message would be to halt implementation so that individuals get the shelter and care they need. Additionally, issuing a broad policy memorandum addressing these concerns and incorporating guidance into of the USCIS Policy Manual, which adjudicators and the public rely on, will help to lift up and cement these important policies.

- **Request that EOIR Suspend Filing Deadlines for Applications that Need to Have Fees Received by USCIS.** Individuals in immigration court proceedings are required to pay fees for applications that will be adjudicated in court. Those fee payments are handled by USCIS. The proof of payment of fee to USCIS is required to thereafter perfect the filing of applications with the immigration courts. Because USCIS offices are closed to the public, it is not currently possible to pay those fees to USCIS. Given these circumstances, USCIS should ensure that EOIR suspend filing deadlines on such applications as they cannot practicably be imposed by the immigration courts.
- **Publish in the USCIS Policy Manual Guidance that Allows Waiver of Biometrics Requirements or Reuse of Previously Captured Fingerprints for Applicants During the Public Health Emergency.** USCIS has discretion to waive biometrics requirements under 8 CFR 103.2, and the agency can use previously captured fingerprints. These measures will be needed to avoid lapses in status and employment authorization by applicants seeking renewals for benefits that require fingerprints. On March 30, 2020, USCIS published an alert to its webpage stating that during the period of public closure, it would use previously captured fingerprints to continue to process renewals of I-765 employment authorizations if an individual was scheduled to take fingerprints at an Application Support Center on or after March 18, 2020, when closure began. We recommend that USCIS expand this to applicants who may not have been scheduled yet for fingerprints, but who have filed renewals that could be adjudicated on previously captured fingerprints. Also, this guidance needs to be published in the USCIS Policy Manual where it will be available to both adjudicators and the public.

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<sup>2</sup> In pertinent part, the USCIS webpage was amended on March 27, 2020 to state, “To address the possibility that some aliens impacted by COVID-19 may be hesitant to seek necessary medical treatment or preventive services, USCIS will neither consider testing, treatment, nor preventative care (including vaccines, if a vaccine becomes available) related to COVID-19 as part of a public charge inadmissibility determination, nor as related to the public benefit condition applicable to certain nonimmigrants seeking an extension of stay or change of status, even if such treatment is provided or paid for by one or more public benefits, as defined in the rule (e.g. federally funded Medicaid).” On the impact of closures on finances, “In addition, if an alien subject to the public charge ground of inadmissibility lives and works in a jurisdiction where disease prevention methods such as social distancing or quarantine are in place, or where the alien’s employer, school, or university voluntarily shuts down operations to prevent the spread of COVID-19, the alien may submit a statement with his or her application for adjustment of status to explain how such methods or policies have affected the alien as relevant to the factors USCIS must consider in a public charge inadmissibility determination. For example, if the alien is prevented from working or attending school and must rely on public benefits for the duration of the COVID-19 outbreak and recovery phase, the alien can provide an explanation and relevant supporting documentation. To the extent relevant and credible, USCIS will take all such evidence into consideration in the totality of the alien’s circumstances.”

- **Allow Photos and Supporting Documents to be Filed After Initial Filings.** Passport photos are required with some benefit applications, but current public safety measures during the pandemic may make it impossible for applicants to obtain such photos. Photos are also captured at the now closed Application Support Centers. In addition, some documentation that may be needed for applications may not be obtainable at this time due to closures of public services such as courts and vital records offices. USCIS should accept initial filings as complete if the applicant has provided an electronic or original signature with correct fee. This comports with regulations for many applications.
- **Excuse Absences by LPRs During the Declared Period of the Pandemic.** We recommend that USCIS consider measures to ameliorate the negative impacts that the current suspension of international travel will have on many immigrants. For example, LPRs may be temporarily abroad and unable to return to the United States due to lack of international flights. They may find that they are adversely impacted by such absences in their applications for naturalization. The agency must clarify that such absences during the pandemic will be assessed as circumstances beyond the individual's control that will not negatively impact continuous residence and lawful residence for naturalization.
- **Suspend the Accrual of Unlawful Presence During the Pandemic.** Accrual of unlawful presence for purposes of INA § 212(a)(9)(B) and (C) should be suspended during the declared period of the pandemic, because international travel is not possible at this time and individuals are not able to depart the country. People should not accumulate the negative impact of unlawful presence when their presence here is due to a national emergency that has ended international travel.
- **Publish a Uniform Policy on Extensions from the End of the Public Health Emergency for All Filing Deadlines.** Because of the national emergency and USCIS closures, it will be impossible for many applicants to meet filing deadlines that may be imposed by USCIS requests, or by expiration of a program that requires filing, such as the expiration of conditional residence after the two-year anniversary. USCIS recently recognized the need for some extensions by announcing flexibility for Administrative Appeals Office (AAO) filing deadlines and some USCIS deadlines.<sup>3</sup> We recommend that the extensions be broadened to also apply to any filing deadlines before USCIS. In addition, this language needs to be included in the USCIS Policy Manual and other policy guidance memos to ensure that adjudicators and the public are aware of it. We urge USCIS to include the language on flexibility on filing deadlines in formal policy guidance as soon as possible, and to broaden it to any deadlines that may apply at USCIS during the period of the pandemic.

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<sup>3</sup> See USCIS, *USCIS Expands Flexibility For Responding to USCIS Requests*, (Mar. 30, 2020)

<https://www.uscis.gov/news/alerts/uscis-expands-flexibility-responding-uscis-requests>. The announcement specifically allows flexibility only for deadlines for cases before the AAO with an issuance date between March 1 and May 11, 2020, with respect to Requests for Evidence (RFEs), Notices of Intent to Deny (NOIDs), Notices of Intent to Revoke (NOIR) and Notices of Intent to Terminate (NOIT), as well as AAO appeals. An earlier announcement, USCIS, *USCIS Announces Flexibility for Requests for Evidence and Notices of Intent to Deny* (Mar. 27, 2020) allowed flexibility for RFEs and NOIDs issued by USCIS between March 1 and May 11, 2020, but does not mention motions that might be filed at USCIS, or any flexibility on other USCIS filing deadlines <https://www.uscis.gov/news/alerts/uscis-announces-flexibility-requests-evidence-notices-intent-deny>.

During this time of international crisis when the future of our global community is at risk, the government should not place additional burdens and uncertainty on the shoulders of immigrant communities. While the ILRC appreciates the measures USCIS has already taken in response to the COVID-19 pandemic, we encourage the agency to put in place additional measures to safeguard the immigrant community. We urge USCIS to provide the information requested and to communicate with the public through robust public engagement as soon as possible.

If you have any questions or require any further information, please do not hesitate to contact Peggy Gleason, Senior Staff Attorney at the ILRC, at [pgleason@ilrc.org](mailto:pgleason@ilrc.org).

Sincerely,

Peggy Gleason

Senior Staff Attorney

Immigrant Legal Resource Center

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